SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 94

BOARD OF COMMISSIONERS OF SAN JUAN,

Petitioner,

vs.

CARLOS M. DE CASTRO

Respondent.

MOTION FOR LEAVE TO FILE OUT OF TIME.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States.

Respondent Carlos M. de Castro respectfully prays for leave to file the enclosed brief out of time, in opposition to the petition for writ of certiorari.

HUGH R. FRANCIS,
Counsel for Respondent.

GABRIEL DE LA HABA,
Of Counsel.

September 24th., 1941.

BRIEF IN OPPOSITION TO THE GRANTING OF THE PETITION OF CERTIORARI

Point one of Petitioner's brief stresses the argument that the Supreme Court of Puerto Rico failed to recognize the constitutional division of powers. We fail to see any weight to this argument. The Supreme Court of Puerto Rico acted within its province, in a judicial capacity, in reviewing the evidence on the charges before the Board of Commissioners and determining that it did not substantiate the charges and was not the just cause contemplated by the statute as grounds for removal. This was in harmony with a long line of decisions by our Supreme Court in the following cases:

Pioraneti vs. *Asamblea*, 31 P.R.R. 522, Sp. ed.; *San Millán* vs. *Asamblea*, 32 P.R.R. 496; *Suarez* vs. *Municipio*, 33 P.R.R. 271; *Cantrés* vs. *Municipio*, 34 P.R.R. 765; *Coll* vs. *Todd*, 35 P.R.R. 572; *Peña* vs. *Asamblea*, 36 P.R.R. 801; *Asamblea* vs. *Corte de Distrito*, 36 P.R.R. 650; *Alfaro* vs. *Asamblea*, 35 P.R.R. 728; *Calero* vs. *Asamblea*, 37 P.R.R. 667; *Porras* vs. *Consejo Municipal*, 37 P.R.R. 689; *Banuchi* vs. *Asamblea* 37 P.R.R. 878; *Rivera* vs. *Asamblea*, 39 P.R.R. 71; *Todd* vs. *Asamblea*, 39 P.R.R. 130; *Chapel* vs. *Asamblea*, 49 P.R.R. 607 Sp. ed.; *Suau* vs. *Capital*, 50 P.R.R. 768 Sp. Ed.; *Valdejuli* vs. *De Castro*, 52 P.R.R. 286.

To accept petitioner's argument would be tantamout to holding that in our democratic form of government each branch thereof, though independent, is not subject to some restraint as contemplated by the framers of the Constitution. Under this theory it would be difficult to imagine any case where the judiciary could intervene to correct wrongs inflicted upon a citizen by the executive or legislative branches of the government.

Points two and two (b) of petitioner's brief can be reduced to the simple proposition that there was no jurisdiction by the courts in Puerto Rico to review by certiorari the acts of the Board of Commissioners of San Juan involving the dismissal of the City Manager.

Petitioner argues that there is no statutory authority for an appeal from a decision in a special certiorari proceeding under the Municipal Law of Puerto Rico or under the special law for the Capital of Puerto Rico (Art. No. 99 Laws of Puerto Rico, 1931 page 652).

This same argument has come up time and again and the Supreme Court has decided that an appeal is proper. We refer to the cases above cited and to Section 295 of the Code of Civil Procedure of Puerto Rico, 1933 Ed. Page 139.

The petitioner argues that inasmuch as the statute creating the remedy of judicial revision by certiorari (Section 46 of Act. No. 99 of May 15, 1931, Laws of Puerto Rico 1931, page 652)) of all legislative or administrative acts of the Board of Commissioners which infringe rights of the complaint specified therein, limits said review to "legislative or administrative acts" that the case at bar does not fall within this classification as it was neither legislative nor administrative.

In support of this argument petitioner cities the case of Sifre vs. Pellón, 54 P.R.R. 568, which is a case under a special law creating the Insular Racing Commission.

The case in point regarding removal of municipal officers in which the Supreme Court of Puerto Rico held that the removal was an administrative act though the procedue therefore was of a quasi judicial nature, is the case of Todd vs. Municipal Assembly 39 P.R.R. 130, a criterion not challenged, until now, in a long line of subsequent municipal cases decided by the Supreme Court of Puerto Rico, cited above.

The weight of authority, apparently adopted by the Supreme Court of Puerto Rico in the case of Todd vs. Municipal Assembly, (supra) and followed uninterruptedly to the present, seems to be, that proceedings

in the excercise of a power to remove officers by the executive or legislative branch of the government are regarded as administrative rather than judicial, although the power is exercised in a judicial way, 46 C. J. 993.

Section 13 of Act No. 99, Laws of Puerto Rico 1931, page 634, provides that the resolutions and acts of the Board of Commissioners shall be stated in ordinances or resolutions. It must be borne in mind that the removal of the City Manager was effected by Resolution No. 373 of April 5th 1930 (R. 6). This act was clearly not a judicial or quasi judicial one but an administrative order following a procedure which participated of a quasi judicial nature. In other words, the fact that the proceeding may have been of a quasi judicial nature does not make the final action of the Board in dismissing the City Manager a judicial or quasi judicial one, but on the contrary, we believe it to be, as held by our Supreme Court, an administrative act.

CONCLUSION

No showing having been made by the petitioner before the Circuit Court of Appeals that the action of the Supreme Court of Puerto Rico was inescapably wrong, in its construction of the local statutes, or patently erroneous, in its conclusion of the evidence, respondent prays that the writ of certiorari be dismissed and the judgement of the United States Circuit Court of Appeals for the First Circuit be affirmed.

HUGH R. FRANCIS,
Counsel for Respondent.

GABRIEL DE LA HABA,
Of Counsel.

September 24th., 1941.